IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.100 of 2021
and
C.M.P.No.6568 of 2021

S. Suresh .. Appellant

Versus

Mrs. Gayathri .. Respondent

Appeal Suit is filed under Section 96 of Civil Procedure Code to set aside the Judgment and decree dated 24.01.2020 passed in O.S. No. 1298 of 2019 on the file of Additional Judge – VI, City Civil Court, Chennai

For Appellant	:	Mr.B.Jawahar
For Respondent	:	Mr. A. Arfat Mohammed

JUDGMENT

This Appeal has been filed to set aside the Judgment and decree dated 24.01.2020 passed in O.S. No. 1298 of 2019 on the file of the learned Additional Judge – VI, City Civil Court, Chennai.

2. For the sake of convenience, the parties to this appeal shall be referred to as per their rank in the trial court as Plaintiff and Defendant.

3. The Plaintiff is the wife of the Defendant herein. Their marriage was solemnised on 01.06.2014 at Arulmighu Karumari Amman Temple, Thiruverkadu as per Hindu rites and customs. Their marriage was a love marriage and the parents of the Plaintiff did not accept her marriage with the Defendant. Even at the time of marriage, the Plaintiff brought 30 sovereigns of gold ornaments and spent Rs.25 lakhs for the marriage. After marriage, the Plaintiff as well as Defendant stayed in the house of the Defendant along with his parents and brother.

4. According to the Plaintiff at the time of marriage, both of them were employed in Citi Bank. It is stated that before the marriage, the Defendant assured the Plaintiff that she can continue the job even after marriage. However, after the marriage, the Defendant asked the Plaintiff to resign her job and to do household works. The Plaintiff was made to do all the house hold works like a servant maid. Further, for one reason or the other, the Defendant postponed to have a child. It is further stated that the Defendant availed loans for the purchase of a car, two wheeler and also availed personal loan. He is a spend-thrift who used to spend lavishly for purchase of dress and other accessories. Even before marriage, the Defendant used to borrow money by citing some reasons, but he never returned back. Similarly, after marriage,

the Defendant insisted the Plaintiff to pay him money. Accordingly, the Plaintiff transferred several amount from 2014 till 2017 from her 3 savings bank account, thus, paid a total sum of Rs.7,45,530/-. That apart, the Plaintiff has paid several amount by way of cash to the Defendant, but there was no proof for the same. According to the Plaintiff, she was also constrained to top up the loan and paid the Defendant various amounts and by utilising the same, the Defendant has purchased a bike for Rs.73,709/- and Rs.6,29,905/- for closing the credit card outstanding. Until the Plaintiff was in her employment, she repaid the loan amount from her salary. However, during December 2016, she lost her job and became dependent upon the Plaintiff for everything. However, the Defendant had developed illicit intimacy with one Uma Backiyalakshmi and ignored the Plaintiff. When it was questioned, the Defendant left his house on 27.06.2017 and his whereabouts were not known. The Plaintiff therefore gave a complaint to the ICF Police based on which a case in Crime No. 686 of 2017 was registered. Ultimately, the Defendant was traced at Andaman and he expressed his unwillingness to live with the Plaintiff. Accordingly, the Defendant filed an application seeking dissolution of marriage before the Family Court, Chennai but he withdrew it. Thereafter, he filed HMOP No. 2690 of 2018 before the V Additional Family Court, Chennai. According to the Plaintiff, for the amount paid to the Defendant, she is repaying the loan to the tune of Rs.18,000/- per month. In such circumstances, the Plaintiff has filed the suit for recovery of Rs.7,45,530/-, Rs.10,00,000/- and Rs.4,51,945/- with interest and to direct the Defendant to pay Rs.1,35,000/- being the court fee paid by her for instituting the suit.

5. On notice, the Defendant filed a written statement stating that for commemoration of the marriage, it was the Defendant who spent Rs.3 lakhs and the Plaintiff has not incurred Rs.25 lakhs for the marriage, as alleged. It is also stated that the suit was filed by the Plaintiff suppressing the repayment of the amount made by the Defendant to her account. It is stated that during the course of the matrimonial life, both the Plaintiff and Defendant have transferred funds to each other account and the Defendant paid a total sum of Rs.11,69,099/- on various dates. Denying that he was a spend-thrift, the Defendant would contend that in order to meet the requirements of the Plaintiff, he was forced to avail loan. The Plaintiff had enjoyed luxurious foreign trips and toured various foreign countries. When the Defendant refused for any further foreign trip inasmuch as the debt has mounted, she started demanding the amount paid by her to him as if they were paid as a loan. The Defendant also availed personal loan to the tune of Rs.10,66,099/- and transferred it to the Plaintiff's account on 22.05.2015. It is also stated that the

Defendant had lost his job for a shorter period and taking advantage of the same, the Plaintiff harassed him in front of his family members. As regards the complaint given by the Plaintiff, it is stated that the Defendant went to Andaman for a vacation trip and knowing fully well about it, the Plaintiff has given a false complaint as if the Defendant's whereabouts are not known. The Plaintiff is 2 years elder to the Defendant and always had a dominating approach towards the Defendant. In view of such attitude of the Plaintiff, the Defendant has filed HMOP No. 3717 of 2017 for dissolution of marriage. On receipt of the notice, the Plaintiff threatened to commit suicide if he did not withdraw the petition. Therefore, left with no other alternative, the Defendant withdrew HMOP No. 3717 of 2017. Thereafter, the Plaintiff continued to ill treat the Defendant and caused untold mental agony and therefore, he has once again filed HMOP No. 2690 of 2018 before the V Additional Family Court, Chennai. The Plaintiff did not reveal the amount which the Defendant had transferred to her account. The Plaintiff is presently employed as a Vice President of Indus Ind Bank and earning Rs.1,25,000/- per month, but she is portraying as if she was dependent on the Defendant for everything. The Plaintiff lavish spending lifestyle had led to the matrimonial disturbance and the Defendant was forced to avail loan. Accordingly, the Defendant prayed for dismissal of the suit.

6. Before the trial court, the Plaintiff examined herself as P.W-1 and marked Ex.A-1 to Ex.A-21. The Defendant examined himself as D.W-1 and marked Ex.B-1 to Ex.B-5. The trial court, on appreciation of oral and documentary evidence, concluded that the total amount claimed by the Plaintiff is Rs.23,32,475/- out of which D.W-1 has specifically stated that for the sum of Rs.10,66,099/- he received, he repaid Rs.11,69,099/- to the Plaintiff, which she has not denied. Therefore, it was concluded that the Defendant repaid Rs.11,69,099/- to the Plaintiff. As regards the payment of Court fee claimed by the Plaintiff at Rs.1,35,000/- the trial court held that the court fee paid was only Rs.69,974/- and therefore, the trial court directed the Defendant to pay Rs.10,28,366/- to the Plaintiff with 12% interest.

7. Challenging the judgment dated 24.01.2020 made in O.S. No. 1298 of 2019, the husband is on appeal.

8. The learned Counsel for the Appellant-Defendant would contend that the loans were repaid to the Plaintiff and therefore, the claim of the Plaintiff was specifically repudiated by filing the written statement. The suit was filed as a counter blast to HMOP.No. 2690 of 2017 filed by the Defendant seeking divorce against the Plaintiff, which is pending. In any event, the

amounts have been paid by the Plaintiff during the subsistence of matrimonial life and those amounts cannot be sought to be recovered as a loan. Thus, there is no lender borrower relationship between the Plaintiff and the Defendant. There is no explanation offered by the Plaintiff as to why she has to file the suit in the year 2019 when the dispute has cropped up even in the year 2013. According to the Counsel for the Defendant-Appellant, only after receipt of the notice in HMOP.No.2690 of 2017, the instant suit was filed. If the Plaintiff intended to file a suit for recovery of money, she ought to have filed the suit long before and not after receipt of notice in HMOP No. 2690 of 2017. The dispute if any can be agitated only before the Family Court as per Sections 7 and 8 of Family Courts Act and the filing of the suit itself is not maintainable.

9. The learned Counsel for the Appellant-Defendant further submitted that there is no relationship of borrower and lender between the Appellant and Respondent warranting to invoke the jurisdiction of the Civil Court with a prayer for recovery of money. The Trial Court had grossly ignored the fact that the relationship between the Appellant and Respondent had strained due to various matrimonial disputes and to wreck vengeance, the instant suit has been filed by the Plaintiff. Accordingly, the Counsel for the

Defendant-Appellant prayed for allowing this appeal.

10. Per contra, the learned Counsel for the Respondent submitted that the Plaintiff, out of blind trust, love and faith towards the Defendant had gone against the wish of her parents and married the Defendant. The Plaintiff had spent Rs.25,00,000/- towards their wedding and was wearing 30 sovereigns of gold ornaments which she had brought from her house. After the marriage, the Plaintiff had cohabited with the Defendant from 01.06.2014 at the matrimonial house in Flat 3-B Gerizim Gardens, Door No. 15, Murthy Nagar, Villivakkam, Chennai. They were living along with the extended family of the Defendant consisting of Defendant's parents, brothers and sister. Before marriage, both the Plaintiff and Defendant were working in Citi Bank. After the marriage, the Defendant insisted the Plaintiff to resign from her job and to look after the household tasks which resulted in severe mental and physical stress on the Plaintiff. The Defendant was neither willing nor was interested in the concept of begetting children and family life. Still, the Plaintiff is cohabiting with the Defendant for sake of the marital relationship. Even before the marriage, the Defendant borrowed money from various people. He had also borrowed money from the Plaintiff. The Plaintiff had lent huge amount to the Defendant. Even after marriage, the Defendant continued to borrow money from the

Plaintiff on various occasions to repay his credit card loans and to spend for his lavish lifestyle. The Plaintiff did not care about parting her salary or her savings or gold ornaments for the Defendant believing that he would be loyal and faithful to her and will not desert her. The Defendant led a very lavish life by utilising the borrowed money of the Plaintiff and most of them were spent on lavish parties with his friends alone. There were fewer instances on which the Defendant took the Plaintiff for a trip and even then, the Plaintiff was asked to spend from her pockets. The Defendant never cared to share the details of expenditure which he incurred from his salary to the Plaintiff and when enquired, the Defendant would threaten the Plaintiff that he will divorce her for this reason alone. The Defendant had looted the hard earned money of the Plaintiff by honey coated words by making false promises of repaying the said borrowed money. The Plaintiff had transferred money from three savings bank account in which she had maintained her hard earned savings. The Defendant lost his job in the month of December 2016. Thereafter, the Defendant started relying totally on the salary of the Plaintiff. The Plaintiff out of good faith, love and affection towards the Defendant had been taking care of the Defendant both mentally as well as economically. Slowly, the Defendant started to avoid the Plaintiff and the Plaintiff was left alone to live with the Defendant's parents in their matrimonial house. The Defendant would return to their house at night and this continued very frequently.

11. The learned Counsel for the Respondent-Plaintiff further submitted that on 23.06.2017, when the Plaintiff enquired the Defendant about the sudden detachment and difference in his behavior towards her, the Defendant admitted that he is having extra-marital affair with one unmarried girl namely Ms. Uma Bhagyalakshmi. The Plaintiff was shocked and surprised to hear this and had begged the Defendant not to play with her life anymore, as she had already suffered a lot from the hands of the Defendant and his family members. On 27.06.2017 the Defendant did not return to the matrimonial house and therefore suspicion arose. The Defendant was not answering calls of the Plaintiff and was not interested in coming back to his house. On 28.06.2017, the Plaintiff with the help of her father had filed a police complaint. Upon Preliminary enquiry, the Police Officials had registered the complaint as Crime No. 686 of 2017 on the file of "ICF Police Station" and traced the Defendant's mobile phone tower to a location at Andaman. The Plaintiff then tried calling up the Defendant from one of her friends number and had once again begged the Defendant to return back to his house. The Defendant replied that he had already made up his mind and is not interested in living a life with the Plaintiff and had already eloped with that girl

"Ms.Uma Bhagyalakshmi" to Andaman and warned the Plaintiff not to disturb him anymore. Thereafter, on 03.06.2017 after the involvement of Ms. Uma Bhagyalakshmi's parents, the Defendant had returned back to the matrimonial house. On 27.07.2017, the Defendant had sent an email expressing his unwillingness to continue living with the Plaintiff. The Defendant apologized for his childish behaviour's towards the Plaintiff and stated that he needed some job to divert himself. The Plaintiff through her business contact secured job for the Defendant. The Defendant promised to repay the amount received after he is placed in a job. The Defendant secured a job in M/s.Bajaj Finserve as a regional sales manager. However, the Defendant quarreled with the Plaintiff with an ulterior motive and played fraud on the Plaintiff by inducing her to repay her the money.

12. The learned Counsel for the Respondent-Plaintiff further stated that on 10.10.2017, the Defendant filed a Divorce Petition on the file of the Family Court, Chennai, which he withdrew. Thereafter, the Defendant once again filed HMOP. No. 2690 of 2018 by making false and frivolous allegations. The Defendant also threatened the Plaintiff with dire consequences during January 2018 that she cannot recover a single Paise from him. Therefore, left with no other option. The Plaintiff has filed the suit and

established that the Plaintiff is entitled to recover the suit claim from the defendnat. The learned Additional Judge – VI, City Civil Court on considering the oral and documentary evidence passed a well-reasoned judgment and it does not call for any interference by this Court. Even though the trial Court has not granted the entire relief sought for by the Plaintiff, the suit was decreed only for Rs.10,298,366/- with interest at the rate of 12% per annum, the Plaintiff has not filed any appeal. In any event, the judgment and decree passed by the trial Court is well reasoned and therefore, the learned Counsel for the Respondent- Plaintiff prayed for dismissal of the appeal.

Point for determination :

1.Whether the Suit filed by the Plaintiff in O.S.No.1298 of 2019 before the City Civil Court, Chennai is maintainable?

2.Whether the Suit claim is barred by limitation?

3.Whether the Judgment and Decree dated 24.01.2020 passed in O.S.No.1298 of 2019 by the learned Additional Judge – VI, City Civil Court, Chennai is without any jurisdiction and therefore non-est in law?

13. Heard the learned Counsel for the Appellant as well as the Respondent and perused the materials placed on record, including the impugned judgment of the Trial Court.

14. The suit was filed by the Plaintiff for recovery of money from the Defendant, who is none other than her husband. Admittedly, there was a strained relationship between the Plaintiff and Defendant. The Defendant also filed a petition for dissolution of the marriage on various grounds. According to the Plaintiff, the amount payable by the Defendant is huge and she cannot afford waiving those amount. Therefore the instant suit was filed for recovery of a sum of Rs.23,32,475/-.

15. On perusal of documents and on perusal of the depositions it is found that the Plaintiff had stated in her examination-in-chief filed as affidavit, the contents of the plaint regarding the marriage, regarding the dispute between the husband and wife that culminated in filing of the HMOP by the husband seeking divorce which forced her to file this suit for recovery of money that she spent when they were living as husband and wife for the debts of the husband obtained as loan from banks. She had furnished the documents as Ex.A-1 to Ex.A-21. Out of which the subject matter of recovery of money is under Ex.A-3 to Ex.A-13 and Ex.A-18 and the of the matter are not directly related to the recovery of money claimed by the Plaintiff. Ex.A-3 to Ex.A-13 and Ex.A-18 are extracted as under:

> “ Ex.A-3 is the statement of account of the Plaintiff/Gayathri maintained with the ICICI Bank, Account No.6011015606161 in which states as follows:-

S.No.	Date	Cheque No.	Amount	Paid towards
1	110315	19906	Rs.6384/-	HDFC loan Ac
2	13.06.2015	BIL/000784027337/Suresh/NSP	Rs.1000/-	Suresh
3	03.08.2015	BIL/000810382216/Suresh/NSP	Rs.30,000/-	Suresh
4	110515	BIL/000861692261/Suresh/NSP	Rs.10,000/-	Suresh
5	09.02.2016	BIL/000914960340/Suresh/NSP	Rs.5,000/-	Suresh
6	16.02.2016	BIL/000918758351/Suresh/NSP	Rs.1300/-	Suresh
7	22.03.2016	BIL/000938286155/Suresh/NSP	Rs.1000/-	Suresh
8	22.03.2016	BIL/000938286159/Suresh/NSP	Rs.1000/-	Suresh
9	19.05.2016	BIL/000971502991/Suresh/NSP	Rs.1200/-	Suresh
10	25.05.2016	BIL/000974295284/Suresh/NSP	Rs.2000/-	Suresh
11	30.05.2016	BIL/000976228713/Suresh/NSP	Rs.5000/-	Suresh
12	08.09.2016	BIL/001038326815/Suresh/NSP	Rs.18000/-	Suresh
13	09.12.2016	BIL/001099673762/Suresh/NSP	Rs.20,000/-	Suresh
14	03.04.2017	BIL/001180268437/Suresh/NSP	Rs.15,000/-	Suresh
15	30.05.2017	BIL/001219784467/Suresh/NSP	Rs.45,000/-	Suresh
16	01.08.2017	BIL/001263139767/Suresh/NSP	Rs.6,600/-	Suresh
17	16.08.2017	BIL/001273131427/Suresh/NSP	Rs.300/-	Suresh

Ex.A-4-statement of account of the Plaintiff/Mrs.Gayathri maintained her account with the Axis Bank (Account No.916010012958600) and the period between 01.04.2016 and 31.03.2017:-

S. No	Date	Cheque No.	Amount	Paid towards
1	28.02.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.30,000/-	Suresh
2	02.03.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.4200/-	Suresh
3	16.05.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.2000/-	Suresh
4	29.04.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.10000/-	Suresh
5	02.05.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.15,000/-	Suresh
6	16.05.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.1500/-	Suresh

S. No	Date	Cheque No.	Amount	Paid towards
7	19.05.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.500/-	Suresh
8	06.06.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.2500/-	Suresh
9	05.08.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.10,000/-	Suresh
10	17.08.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.500/-	Suresh
11	05.09.2017	MOB/TPFT/Suresh/S/916010006381733	Rs.20,000/-	Suresh

Ex.A-5-statement of account of the Plaintiff/Mrs.Gayathri maintained her account with the ICICI Bank (Account No.600601508926) transaction period between 01.09.2010 and 03.08.2011:-

S. No	Date	Cheque No.	Amount	Payment towards
1	19.03.2011	2314	Rs.1000/-	S.Suresh
2	21.04.2011	377522/TRFR	Rs.500/-	Suresh
3	30.05.2011	377527/TRFR	Rs.300/-	Suresh
4	23.07.2011	384961/TRFR	Rs.320/-	Suresh
5	16.11.2011	384976/TRFR	Rs.1000/-	Suresh
6	07.12.2011	384978/TRFR	Rs.1000/-	Suresh
7	11.01.2012	384985/TRFR	Rs.2500/-	Suresh
8	29.06.2012	407487/TRFR	Rs.1000/-	Suresh
9	29.10.2012	407507/TRFR	Rs.2500/-	Suresh
10	28.05.2014	457415/TRFR	Rs.1,00,000/-	Suresh
11	01.06.2014	IPS/BENZZ Park/2014060123480570	Rs.16,000/-	Reception
12	23.09.2014	BIL/000651581321/Suresh/NSP	Rs.500/-	Suresh
13	20.10.2014	BIL/000664386239/Suresh/NSP	Rs.7,000/-	Suresh
14	16.04.2015	BIL/000753490237/Suresh/NSP	Rs.500/-	Suresh
15	02.05.2015	BIL/000761278803/Suresh/NSP	Rs.18,000/-	Suresh
16	25.05.2015	NEFT-N143150071864032/Suresh S22636	Rs.1,00,000/-	Suresh

S. No	Date	Cheque No.	Amount	Payment towards
17	06.08.2015	BIL/000812860138/Suresh/NSP	Rs.25,000/-	Suresh
18	12.08.2015	BIL/000816262482/Suresh/NSP	Rs.1000/-	Suresh
19	02.09.2015	BIL/000826758711/Suresh/NSP	Rs.25,000/-	Suresh
20	30.11.2015	489087/TRFR	Rs.2000/-	Suresh
21	23.12.2015	BIL/000887083883/Suresh/ 437551084139101	Rs.10,000/-	Suresh
22	20.01.2016	BIL/000902876027/Suresh/NSP	Rs.10,000/-	Suresh
23	30.01.2016	BIL/000908037796/Suresh/NSP	Rs.10,000/-	Suresh
24	01.02.2016	BIL/000909038430/Suresh/NSP	Rs.1000/-	Suresh
25	06.02.2016	BIL/000913041948/Suresh/NSP	Rs.2,000/-	Suresh
26	24.02.2016	BIL/000922127601/Suresh/NSP	Rs.260/-	Suresh
27	17.05.2016	BIL/000970365502/Suresh/NSP	Rs.2000/-	Suresh
28	06.09.2016	BIL/001036771177/Suresh/NSP	Rs.25,000/-	Suresh
29	09.12.2016	BIL/001099674694/Suresh/NSP	Rs.3,000/-	Suresh
30	16.01.2017	BIL/001127592463/Suresh/NSP	Rs.20,000/-	Suresh
31	15.03.2017	BIL/001168420019/Suresh/NSP	Rs.2000/-	Suresh
32	25.03.2017	BIL/001174836254/Suresh/NSP	Rs.25,000/-	Suresh
33	25.03.2017	BIL/001174850981/Suresh/NSP	Rs.25,000/-	Suresh
34	06.06.2017	BIL/001225557065/Suresh/NSP	Rs.6,000/-	Suresh
35	17.07.2017	BIL/001252947874/Suresh/NSP	Rs.800/-	Suresh
36	25.07.2017	BIL/001257930613/Suresh/NSP	Rs.300/-	Suresh
37	28.08.2017	BIL/001279382691/Suresh/NSP	Rs.300/-	Suresh
38	30.08.2017	BIL/001281626358/Suresh/NSP	Rs.500/-	Suresh
39	31.08.2017	BIL/001281903647/Suresh/NSP	Rs.100/-	Suresh
40	02.09.2017	BIL/001283927910/Suresh/NSP	Rs.50/-	Suresh
41	05.09.2017	DECS/HDFC Ltd) EMI/DEBIT 0003050507803	Rs.15,578/-	HDFC Loan
42	05.09.2017	DECS/HDFC Ltd) EMI/DEBIT 0003051216287	Rs.12,196/-	HDFC Loan
43	05.09.2017	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan

S. No	Date	Cheque No.	Amount	Payment towards
44	05.09.2017	DECS/HDFC Ltd) EMI/DEBIT 0003051216288	Rs.5,343/-	HDFC Loan
45	05.01.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051216287	Rs.12,196/-	HDFC Loan
46	05.01.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051218288	Rs.5,343/-	HDFC Loan
47	05.01.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan
48	05.02.2018	HDFC/EMI/DEBTS 0003051068239	Rs.10,838/-	HDFC Loan
49	05.02.2018	HDFC/EMI/DEBTS 0003050507803	Rs.15,578/-	HDFC Loan
50	05.02.2018	HDFC/EMI/DEBTS 0003051216287	Rs.12,196/-	HDFC Loan
51	05.03.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan
52	05.03.2018	HDFC/EMI/DEBTS 0003051216287	Rs.12,196/-	HDFC Loan
53	05.03.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051218288	Rs.5,343/-	HDFC Loan
54	05.03.2018	HDFC/EMI/DEBTS 0003050507803	Rs.15,578/-	HDFC Loan
55	05.04.2018	HDFC/EMI/DEBTS 0003050507803	Rs.15,578/-	HDFC Loan
56	05.04.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan
57	05.04.2018	HDFC/EMI/DEBTS 0003051216287	Rs.12,196/-	HDFC Loan
58	05.04.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051218288	Rs.5,343/-	HDFC Loan
59	05.05.2018	HDFC/EMI/DEBTS 0003050507803	Rs.15,578/-	HDFC Loan
60	05.05.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan

S. No	Date	Cheque No.	Amount	Payment towards
61	05.05.2018	HDFC/EMI/DEBTS 0003051216287	Rs.12,196/-	HDFC Loan
62	05.05.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051218288	Rs.5,343/-	HDFC Loan
63	05.06.2018	HDFC/EMI/DEBTS 0003050507803	Rs.15,578/-	HDFC Loan
64	05.06.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051068239	Rs.10,838/-	HDFC Loan
65	05.06.2018	HDFC/EMI/DEBTS 0003051216287	Rs.12,196/-	HDFC Loan
66	05.06.2018	DECS/HDFC Ltd) EMI/DEBIT 0003051218288	Rs.5,343/-	HDFC Loan

Ex.A-6- HDFC Account summary
Borrower – Mrs.Gayathri Muthuswamy
Co Borrower (s) – Mr.Suresh Subramaniam
Dues up to 31.01.2019, Rs.12196/-, payable as on 28.02.2019,
Loan amount - Rs.10,00,000/-
Loan Type - Resident Home Equity – Variable Rate – Monthly Rest
Disbursed amount - Rs.10,00,000/-.
Current EMI - Rs.12,196/-.
Loan term (Balance) – 136 months
Loan term (Original) – 180 months
Last Installment date – 31.05.2030

Ex.A-7 – HDFC Loan borrowed by Gayathri Muthuswamy

Ex.A-8 and Ex.A-9 Loan borrowed by Suresh

Ex.A-10-Personal Loan by Suresh Account No.30860937
Loan amount – Rs.2,25,000/-
Disbursed amount – Rs.2,23,856/-
EMI amount – Rs.6,036/-
Total installment – 48 Months

Ex.A-11- Statement of Loan Account of Suresh for Polo 1.2 L Petrol Comfort

Loan amount – Rs.5,93,238/-
Disbursed amount – Rs.5,54,163/-
EMI Amount – Rs.12,711/-
Total tenure – 60 Months.

Ex.A-12 – HDFC Loan borrowed by Gayathri Muthuswamy and Suresh Subramaniam for Rs.10,00,000/-

Ex.A-13- EMIs from 01.10.2018 to 31.12.2018 and from 01.01.2019 to 28.02.2019. Summary of account as on 28.02.2019 ICICI Account No.600601508926 in the name of Mrs.Gayathri

S.No	Date	Cheque No.	Amount	Towards
1	06.10.2018	ACH/HDFC/216664541	Rs.5343/-	HDFC
2	05.10.2018	ACH/HDFC/216664540	Rs.12190/-	HDFC
3	05.11.2018	ACH/HDFC/218233595	Rs.5343/-	HDFC
4	05.11.2018	ACH/HDFC/218233558	Rs.10,838/-	HDFC
5	05.11.2018	ACH/HDFC/218233594	Rs.12,196/-	HDFC
6	05.12.2018	ACH/HDFC/218233595	Rs.5343/-	HDFC
7	05.12.2018	ACH/HDFC/218233558	Rs.10,838/-	HDFC
8	05.12.2018	ACH/HDFC/218233594	Rs.12,196/-	HDFC

Ex.A-18 – Citi Bank Credit Card Loan Amount Rs.1,35,000/-."

16. The Plaintiff was cross-examined on behalf of the Defendant. In the cross examination, the documents relied by the husband/Defendant was marked as Ex.B-1 to Ex.B-5 which are extracted as under:

"Ex.B-1 is ICICI Bank Statement from 20.11.2018 which was marked during the cross-examination of the Plaintiff as P.W-1.

Ex.B-2- marked during cross-examination of P.W-1 as under:

S.No	Date	Cheque No.	Amount	Paid towards
1	31.10.2016	MOB/TPFT/Gayatri 916010012958600	Rs.10,000/-	Gayatri
2	06.01.2017	NEFT/MB/AXMB 170166717611/Gayatri	Rs.20,000/-	Gayatri
3	16.04.2017	MOB/TPFT/Gayatri 916010012958600	Rs.35,000/-	Gayatri

Ex.B-3 marked during the cross-examination of P.W-1 as under:

S.No	Date	Cheque No.	Amount	Paid towards
1	23.05.2018	NEFT/DR-ICICI 0006006 Gayatri N143150071864032	Rs.1,00,000/-	Gayatri
2	28.05.2015	IMPS-P2A-514810395862 – Investment Gayatri	Rs.15,000/-	Gayatri
3	29.05.2015	IMPS-P2A-514910134777 – house Advance - Gayatri	Rs.1,50,000/-	Gayatri
4	29.05.2015	IMPS-P2A-514910134031 – Medicine	Rs.1000/-	Gayatri
5	26.06.2015	IMPS-P2FA-517712368499- Expenses – Gayatri	Rs.10,000/-	Gayatri
6	29.07.2015	NEFT/DR/ICICI0006006 Gayatri Net Bank-MUM-N210150084089023	Rs.10,000/-	Gayatri
7	09.09.2015	IMPS-P2A52522336-1312-EMI Gayatri	Rs.10,000/-	Gayatri
8	06.10.2015	IMPS-P2A-527917372068-PROP TAX Gayatri	Rs.15,000/-	Gayatri
9	26.11.2015	IMPS-P2A-533011174138-EMI-Gayatri	Rs.5099/-	Gayatri
10	15.12.2015	IMPS-P2A-534912361417-Card-Gayatri	Rs.10,000/-	Gayatri
11	23.12.2015	IMPS-P2A-535711190060-Credit Card Bill- Gayatri	Rs.10,000/-	Gayatri
12	01.08.2016	IMPS-P2A-621412338743-TRF Gayatri	Rs.58,000/-	Gayatri
13	02.09.2016	05751000011644-TPT LOVE U	Rs.50,000/-	Gayatri
14	22.12.2017	IMPS-735618144406-Gayatri ICICxxxxxx8926	Rs.5,000/-	Gayatri
15	07.01.2018	IMPS-800716304683-Gayatri	Rs.5,00/-	Gayatri

S.No	Date	Cheque No.	Amount	Paid towards
		ICICIxxxxxx8926-TRF		
16	18.01.2018	IMPS-801810338376-Gayatri-ICICxxxxx8926-NA	Rs.2,000/-	Gayatri
17	15.02.2018	IMPS-804613306671-Gayatri-ICICxxxxx8926 Others	Rs.20,000/-	Gayatri

Ex.B-4-Bank Statement of Suresh, ICICI Bank, April to December 2013 marked during cross-examination.

Ex.B-5-Bank Statement of Suresh, ICICI Bank, April to December 2013 marked during cross-examination."

17. On appreciating the oral and documentary evidence, the learned Trial Judge concluded that out of the sum of Rs.23,32,475/-, the Defendant had stated that he paid a sum of Rs.11,69,099/- to the Plaintiff, which she has not disputed. Therefore, the learned Judge proceeded to examine the liability, if any, of the Defendant, to pay the balance amount. This finding of the learned Trial Judge to the effect that the Defendant had established that he had paid the sum of Rs.11,69,099/- has not been questioned by the Plaintiff by filing any independent appeal.

18. For examining the claim of the Plaintiff, the learned Judge on appreciation of evidence, observed that there is no specific denial about the amount received by the Defendant nor it was proved by any documentary evidence that he is not liable to pay the amount. Also, the learned Judge held

that the Plaintiff claim that she had availed loan Rs.1,35,000/- to pay the court fee, but the Court fee paid was only Rs.69,974/-. After collecting Rs.11,69,099/- and deducting Rs.1,35,000/- from the claim made by the Plaintiff, the learned Judge had decreed the suit only for Rs.10,28,366/-. Therefore, the amount arrived by the learned VI Additional Judge, City Civil Court, Chennai, is found to be proper.

19. For decreeing the suit partially, the learned Judge placed reliance on the oral and documentary evidence, particularly the bank accounts. It was concluded that the Plaintiff had paid various amount to the Defendant, but they were not successfully established by the Defendant by producing evidence to the contra. In other words, the Defendant could not produce any evidence to show that the sum of Rs.11,63,376/- has been repaid to the Plaintiff. Therefore, the trial court held that in the absence of any documentary proof evidencing the payment of the aforesaid amount, the Plaintiff is entitled for recovery of such amount.

20. On perusal of Sections 7 and 8 of the Family Court Act, it is seen that the dispute concerning the present case is not related to the property or any other asset. The dispute in this case is the amount paid as loan. It is only

the money that was spent by the wife to the husband which had been proved by the materials placed such as the bank statements and other documents. Therefore, the submission of the Counsel for the Appellant/Defendant that only the Family Court has jurisdiction and the Trial Court has no jurisdiction to entertain the suit cannot be sustained. The Plaintiff claims in the plaint itself that the transactions are borne out of Bank documents and other documentary proof. As the matrimonial life is strained and the debts incurred by the Plaintiff has been surging, she is entitled to maintain the suit even though there is no relationship as borrower or lender. The Plaintiff in this case has proved that she availed loan and paid the loan amount to the Defendant. When the hard-earned amount of the Plaintiff has been paid to the Defendant, she is entitled for recovery of such amount. Under those circumstances, the principles of fairness, equity and good conscience which governs the Civil Court, this is a special case whereby money suit for recovery money filed is maintainable. When the Defendant decided to dissolve the marriage, the Plaintiff has no other alternative relief except to file the suit for recovery of the amount spent. I therefore hold that the suit is maintainable. The judgment of the learned Additional Judge – VI, City Civil Court granting decree to the Plaintiff for Rs.10,28,366/- along with 12% interest from the date of plaint till the date of decree and 6% interest from the date of decree till the date of realization is found proper and maintainable and the same is hereby confirmed.

21. In the light of the above discussion, the points for determination are answered as follows:

Point for determination No.1.

Whether the Suit filed by the Plaintiff in O.S.No.1298 of 2019 before the City Civil Court, Chennai is maintainable?

The suit is for recovery of money which is maintainable before any Civil Court since the pecuniary jurisdiction is exceeding the limit of Assistant Judge, City Civil Court, it was disposed of by the learned VI Additional Judge, City Civil Court. City Civil Court has vast jurisdiction. Just because the suit is between the husband and wife, it does not exclude the jurisdiction of the Civil Court. The suit for recovery of money before a competent Civil Court is maintainable. Even though the status of the parties are husband and wife, the claim of the wife is proved through Bank statements which is not disputed by the Defendant in the written statement. The contention that the Civil Court has no jurisdiction cannot be accepted as the Civil Court has vast jurisdiction regarding matters of civil dispute. This is a matter of civil dispute arising basically out of matrimonial dispute. Just because the suit was instituted before the Civil Court it does not mean that the Civil Court has no jurisdiction, as the status of the parties are husband and wife. Therefore, the suit filed by the Plaintiff in O.S.No.1298 of 2019 before the City Civil Court, Chennai, is maintainable. The point for determination No.1 is answered against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

Point for determination No.2:

Whether the Suit claim is barred by limitation?

The claim of the Plaintiff is based on the dispute between the husband and wife wherein she had spent her hard earned money for the repayment of loan of the husband. After taking advantage of the earnings of the wife, the Defendant is alleged to have developed a relationship with another woman and decided to divorce his wife. Therefore, she claims recovery of money spent by her towards loan of the husband. The loans are still pending. Therefore, it is not barred by limitation. The claim of the wife for recovery of money spent by her towards the loan availed by the husband/Defendant is sought to be recovered by furnishing bank statements. Therefore, it is not hit by limitation. The payment made by her continues till date of filing of the suit. The loans are still existing liability of the husband. Therefore, the point for determination No.2 is answered against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

Point for determination No.3:

Whether the Judgment and Decree dated 24.01.2020 passed in O.S.No.1298 of 2019 by the learned Additional Judge – VI, City Civil Court, Chennai is without any jurisdiction and therefore non-est in law?

The judgment and decree passed by the learned VI Additional Judge, City Civil Court, Chennai, in O.S.No.1298 of 2019 is not without any jurisdiction, it has jurisdiction and therefore, not non-est in law. The decree is enforceable in law. The decree granted by a competent Civil Court is maintainable and enforceable. Therefore, the point for determination No.3 is answered against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

In the result, this ***Appeal Suit is dismissed.*** The Judgment and decree passed by the learned Additional Judge – VI, City Civil Court, Chennai in O.S.No.1298 of 2019 dated 24.01.2020 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

03.03.2025

dh
Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order

To

1. The Additional Judge – VI,
   City Civil Court, Chennai.

2. The Section Officer,
   V.R.Section,
   High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.,

dh

Appeal Suit. No.100 of 2021
and
C.M.P.No.6568 of 2021

03.03.2025